MIKE JOHANNS NEBRASKA

404 RUSSELL SENATE OFFICE BUILDING WASHINGTON, DC 20510 (202) 224–4224 (202) 228–0436 FAX (202) 228–4285 TTY

United States Senate

WASHINGTON, DC 20510

June 27, 2013

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
APPROPRIATIONS
BANKING, HOUSING, AND URBAN AFFAIRS
VETERANS' AFFAIRS

The Honorable Arthur A. Elkins, Jr. The Inspector General Environmental Protection Agency Washington DC 20560

Dear Mr. Elkins:

Thank you for the opportunity to comment on emerging issues, specific products, and services on which the Office of the Inspector General (OIG) at the Environmental Protection Agency (EPA) should focus. The conduct of the EPA has triggered substantial frustration in my state. It is my belief that the frustration has grown so substantially that it threatens to permanently damage the EPA. I have included below leading examples of circumstances giving rise to this frustration. Consequently, I believe these areas warrant additional scrutiny.

Privacy and Personal Data:

As you know, EPA is entrusted with substantial volumes of personal and private information. Unfortunately, as recently as February of this year, the Agency ignored its obligations under the Privacy Act, the privacy exceptions applicable to distributed material under the Freedom of Information Act, as well as internal privacy policies when it released several hundred documents which included highly detailed and in many cases personal information, including telephone numbers, email addresses, individual names and addresses and notations dealing with matters personal in nature. The OIG should investigate this release, determine whether EPA violated the law, and review the consequences for those involved in the distribution.

Conduct of Official Business on Unofficial Communications Accounts:

EPA's use of unofficial email and other electronic communication accounts at minimum frustrates federal law directing the collections and retention of agency records as well as the Freedom of Information Act, which grants the public presumed access to all such records. The OIG should examine all communications and records for content sufficient to qualify them as official, and review the process the Agency uses to designate those communications as federal records, as well as whether the Agency correspondingly makes these communications available to FOIA requests. Naturally, past FOIA requests rendered incomplete by the results of the review should be amended.

Mr. Elkins June 27, 2013 Page 2

"Sue and Settle" and Inappropriate Collaboration with Advocacy Organizations:

The content of these communications should also be reviewed to examine whether the EPA has inappropriately collaborated with environmental advocacy organizations, particularly with respect to the terms, content, and timing of lawsuits, and the consent decrees and settlements that spring from those lawsuits. The review should include the extent to which EPA has sought to include discretionary duties within the terms of consent decrees and settlements as well as an assessment of the total content of rules not subject to normal notice-and-comment rulemaking procedures under the Administrative Procedure Act because they were promulgated pursuant to the terms of a consent decree or settlement.

I look forward to your review of these practices. As noted, I am sincerely appreciative of your effort to consider my views on the OIG's work plan. If you or your staff has any questions, please do not hesitate to contact me or my office. We look forward to working with you.

Sincerely,

Mike Johanns

United States Senator